UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 05 June 2012

CASE NO.: 2012-TNE-00008

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR,
Prosecuting Party,

v.

CHAMPLAIN STONE, LTD D/B/A CHAMPLAIN STONE,
Respondent.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This matter arises from the request for hearing filed by the Respondent in the above matter, which arises from the Secretary of Labor's enforcement of H-2B provisions of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(H)(ii)(b), as amended ("the Act"), and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart A. On January 30, 2012, the Administrator, Wage & Hour Division, United States Department of Labor ("the Administrator") issued a determination letter that Respondent committed violations regarding an Application for Temporary Employment Certification ("the Application") in violation of the Act. Specifically, the Respondent willfully misrepresented a material fact on the application regarding the period of intended employment and substantially failed to meet conditions of the Application including failure to hire or rehire U.S. workers, failure to provide terms and working conditions, and failure to provide notice to the Department of Labor. *See* 20 C.F. R. §§ 655.60(a), 655.60(b).

The Administrator determined that Respondent owed back wages totaling $38,516.81 to fifty-two U.S. workers and assessed an additional civil monetary penalty in the amount of $15,250.00. On February 14, 2012, the Respondent, pursuant to 20 C.F.R. §655.71, timely filed a request for review of the Administrator's determination of the civil monetary penalties only. A hearing was scheduled for March 23, 2012, in Albany, New York. On March 2, 2012, the New York's Office of Regional Solicitor submitted a letter requesting the hearing be rescheduled to allow the parties the opportunity to explore settlement possibilities, to which the Respondent did not object. The hearing was rescheduled for June 22, 2012, in Albany, New York.

On May 29, 2012, the parties filed Consent Findings. I have reviewed the parties' Consent Findings and find them to be a fair, adequate and reasonable settlement. IT IS HEREBY ORDERED:

1. These Consent Findings are incorporated by reference in this Order and are hereby approved.

2. The Consent Findings shall have the same force and effect as an order made after full hearing.

3. The entire record upon which the Order issued is based shall consist of the January 30, 2012 Administrator's Determination Letter and these agreements and consents.

4. The parties waive any further proceeding before the administrative law judge.

5. The parties waive any right to challenge or contest the validity of the Consent Findings and any Order entered in accordance herewith.

6. The Consent Findings fully and finally resolve all outstanding issues between the parties that were raised, or reasonably could have been raised in connection with the Administrator's determination letter of January 30, 2012.

7. The Administrator amends the Determination Letter to allege Respondent owes civil money penalties in the total amount of $13,500.00.

8. The Respondent agrees it violated the Act and agrees to pay a civil monetary penalty of $13,500.00 and said sum should be tendered, in accordance with the payment schedule attached to the Consent Findings, to the "Wage and Hour Division- Labor" by certified check or money order.

9. In the event that Respondent fails to make payments in accordance with the payment schedule the entire amount of the penalty shall become due and payable immediately without further notice or demand by the Administrator. Any defaulted balance will be subject to the assessment of interest and penalty interests at rates determined by the U.S. Treasury under the Debt Collection Improvement Act of 1996, and other delinquent charges and administrative costs will be assessed. In the event of default, the Administrator and/or Secretary of Labor intends to pursue enforcement of the agreement and/or any additional collection action that may include, but not limited to, administrative offset, referral to the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

10. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the terms of the Consent Findings is retained by the Office of Administrative Law Judges.

11. Enforcement proceedings for violation of the Consent Findings may be initiated any time by filing a motion for an order of enforcement and sanctions with the Administrative Law Judge.

12. Each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

13. The hearing scheduled for June 22, 2012, in Albany, New York is CANCELLED.

14. The Consent Findings shall constitute the final Administrative Order in this case.

SO ORDERED.

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COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts